

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

BACARDI CORPORATION
Employer

and

MOVIMIENTO SOLIDARIO SINDICAL

Petitioner

Case 24-RC-8628

and

UNION INTERNACIONAL UAW, LOCAL 2415,
AFL-CIO¹

Incumbent-Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 2, 2009, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine the appropriate unit for collective-bargaining. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.²

¹ The name of the Incumbent-Union is hereby corrected to reflect its affiliation to the AFL-CIO, as reflected on its website.

² The parties have filed briefs in support of their respective positions which have been duly considered.

Upon the entire record in this proceeding the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The parties stipulated and I find that Bacardi Corporation is a Puerto Rico corporation engaged in the manufacturing of rum at its Cataño, Puerto Rico facility. During the past twelve month period, the employer derived gross

I. THE ISSUES

Movimiento Solidario Sindical, herein the Petitioner, seeks an election in the same unit as described in the current collective-bargaining agreement between the Incumbent, Union Internacional, UAW, and Bacardi Corporation, herein the Employer. As evidenced in the hearing, the Incumbent contends that the petition is untimely. In the alternative, it seeks an election in a unit including the classifications of laboratory analysts and anaerobic plant technicians. Contrary to the Incumbent, the Employer contends that the laboratory analysts and the anaerobic plant technicians should be excluded on the basis that they are confidential employees and in the alternative that the Region disposed of this same issue in a prior case, 24-UC-211.

The issues in this case are: a) whether the petition was timely, b) whether the disputed classifications of laboratory analysts and anaerobic plant technicians share a substantial community of interest to warrant their inclusion in

revenues valued in excess of \$500,000 and received materials and supplies valued in excess of \$50,000 from points and places located outside the Commonwealth of Puerto Rico.

- c. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- d. The parties stipulated and I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
- e. The record reflects that the Incumbent is a labor organization within the meaning of Section 2(5) of the Act.
- f. The labor organizations involved both claim to represent certain employees of the Employer.
- g. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9(c) (1) and section 2(6) and (7) of the Act.
- h. The Incumbent filed a motion essentially objecting to the translation submitted by the Employer concerning Joint Exhibits 1, 2, 3 and 4, and requiring that these be certified translations. The Employer filed a motion in response. I have considered both motions and find that the certification of translations is not a requirement in Board proceedings. However, the accuracy and omissions of the translations have been noted and considered in this proceeding, thus, I shall dismiss the Incumbent's motion.

the existing unit; and, c) whether the employees in the disputed classifications are confidential employees under the Act.

II. THE EMPLOYER'S OPERATIONS

The Employer operates a distillery and bottling plant in Cataño, Puerto Rico for the manufacture of rum. The plant is a facility of approximately 112 acres, encompassing ten buildings which house several departments: the visitor's center, the general offices, marketing and sales department, the bottling plant, processing, laboratory/quality control (QC), engineering and maintenance, distillery, anaerobic plant, and the warehouse.

The operations department is divided into business units. Among these units are the distillery, the bottling plant, processes, supply management, engineering, quality (QA), and environmental and risk control. The operations vice-president oversees this department and the directors, who are responsible for the operation of the business units, report to the operations vice-president.

III. BARGAINING HISTORY

On November 14, 2000, the Incumbent was certified as the exclusive collective-bargaining representative in a unit of maintenance and production employees in Case 24-RC-8126. There is a collective-bargaining agreement currently in effect which describes the unit as follows:

"Included: All regular hourly production and maintenance employees employed by the Employer at its distillery and bottling plant at Barrio Palmas in Cataño, Puerto Rico.

Excluded: All executive, administrative, professional, confidential personnel, all salaried personnel, foremen, office employees, office janitors, messengers, bartenders, cocktail employees, chauffeurs of executives, guards and supervisors as defined in the Act, and as defined in Case 24-RC-6358³ of the National Labor Relations Board.

The extant collective-bargaining agreement was duly executed by the Incumbent and the Employer on May 25, 2006, and provides a retroactive effective date of January 1, 2006. The agreement also provides that salaries, benefits, and all other contract provisions will become effective on May 1, 2006. The agreement is set to expire on December 31, 2011.

IV. THE POSITION OF THE PARTIES

The Incumbent contends that the petition, filed on February 13, 2009 should be dismissed on the grounds that it was untimely. According to the Incumbent, the open period in contracts of more than 3 years duration falls within the 90-60 day period prior to the third anniversary of the execution of the contract. Since in this case the contract was executed on May 25, 2006, the Incumbent asserts that the February 13, 2009 filing date of the instant petition renders it untimely. The Petitioner, on the other hand, contends that the petition was timely on the basis that the contract became effective on January 1, 2006, not on May 26, 2006. The Employer did not take a position in this regard.

³ On October 10, 1979, Congreso de Uniones Industriales de Puerto Rico, a former representative of the petitioned-unit, was certified as such in 24-RC-6358. While the parties did not introduce on the record the Certification of Representative issued in Case 24-RC-6358, I take administrative notice of it under FRE 201(c).

The Petitioner and the Employer, contrary to the Incumbent, take the position that the disputed classifications of laboratory analysts and anaerobic plant technicians do not share a community of interest with the unit.

The Employer, on the other hand, argues that the laboratory analysts and the anaerobic plant Technicians are confidential employees and thus should be excluded from the unit because they have access to confidential business information and/or secrets of the rum formula. The Employer also argues that in the year 2000, the Incumbent filed a petition for unit clarification in Case 24-UC-211 where it sought to include the classifications of laboratory analysts and anaerobic plant technicians but the petition was ultimately dismissed pursuant to a Decision and Order issued in 2002.⁴

The Petitioner stated on the record its desire to proceed to an election even if the unit found appropriate is different from the petitioned-for unit.

V. THE PETITIONED-FOR UNIT

The Petitioner seeks to represent the employees in the following unit:⁵

Included: All regular hourly production and maintenance employees employed by the Employer at its distillery and bottling plant at Barrio Palmas in Cataño, Puerto Rico.

Excluded: All executive, administrative, professional, confidential personnel, all salaried personnel, foremen, office employees, office janitors, messengers, bartenders, cocktail employees, chauffeurs of executives, guards and supervisors as defined in the Act, and as

⁴ On September 27, 2002, in Case 24-UC-211 the Region issued a Decision and Order dismissing the petition on the basis that the Petitioner (the Incumbent in the instant case) failed to show good cause as to why the petition should not be dismissed given the fact that the classifications sought existed at the time of Petitioner's certification as a bargaining representative and at the time the collective-bargaining agreement had been reached with the Employer.

⁵ The Petitioner amended the petition at the hearing to conform it to the unit as described in the extant collective-bargaining agreement.

defined in Case 24-RC-6358 of the National Labor Relations Board.

VI. FACTS

1. Unit Employees

There are approximately 121 employees in the unit. Article 17, Section 1 of the extant collective-bargaining agreement further defines the production and maintenance classifications as those who perform general labor, such as the helpers, bottling operators, forklift operators, barrel makers, welders, electricians, mechanics, distillery operators, and maintenance operators. In essence, the distillery employees produce the rum by distilling raw materials into alcohol. The electricians maintain and repair the electric areas and equipment. The maintenance employees fix, repair and perform preventive maintenance to the production and operations equipment. They do not, however, perform preventive maintenance to the laboratory equipment.

A summary of the Employer's organizational hierarchy illustrate that within the same operational business units there are different unit classifications. In the bottling plant, there are general laborers, bottling operators, and industrial mechanics; in the engineering department there are maintenance assistants, electricians, electrician assistants, welders, automotive mechanics and construction assistants; in the process area there are forklift operators, barrel makers, general laborers, mechanics and assistants; in the supply management area there are general laborers and forklift operators; and in the distillery there are distillery operators and anaerobic plant technicians, a disputed classification.

Although the record is devoid of specific evidence regarding interchange, Articles 9 and 17 of the extant collective-bargaining agreement tend to show that there is a degree of interchange among unit employees, regardless of their classification. For example, Article 9, Section 9- Overtime Outside the Department - provides that in the event there are no other available qualified employees in the department, available employees will be sought in other departments. In this regard, Article 17, Section 3- Movement of Personnel, specifically provides that the Company retains its managerial discretion to move personnel in order to perform other duties, as it has always done.

The record evidence shows that unit employees are non-exempt employees. They are paid double time for overtime work and are paid on a weekly basis. They receive between 4% to 7.25% of their annual salary in Christmas bonuses and receive an annually fixed and non-guaranteed bonus. Most unit employees share the same parking area, which is the only parking area located close to the restroom and lockers area used by unit employees. The Employer provides lockers to unit employees since it is required by the collective-bargaining agreement. unit employees wear uniforms consisting of a plain shirt and pants. However, there is a color distinction with the uniform worn by the supervisors.

The rules of conduct currently in effect are applicable to all employees companywide, including unit and non-unit employees. In addition, all employees register their attendance using the same program, 'Kronos', however, each employee can only punch at his/her respective work area. The leave of absence

procedure is the same for all employees; requests must be directed to their immediate supervisor.

2. The laboratory analysts

There are seven laboratory analysts who work at the laboratory/QC building. The QA auditor, QC counseling facilitator, QC facilitator and the QC inspectors work in the same building as the laboratory analysts. The laboratory/QC building is located approximately 15 minutes walking distance from the bottling and distillery areas. The laboratory analysts are responsible for analyzing, evaluating and preparing reports of samples related to the manufacture of the product. They also prepare solutions and reactors to be used in the laboratory area, they calibrate laboratory analytical instruments, certify results, and perform preventive and maintenance work on laboratory equipment, such as spectrometry, chromatography, PH meter, viscometer, and conductometer, among others. They are supervised by the QC facilitator, who in turn reports to the QA director. As stated earlier, the QA director reports to the vice-president of operations.

The laboratory analysts are assigned to work a regular shift from 7:00 a.m. to 4:00 p.m. The record, however, does not specify whether they work Monday through Friday. According to the job description, the position requires a bachelor's degree in Science with a major in chemistry, in addition to three to five years of experience in similar functions, and special trainings related to their specific classification. According to the record evidence, all laboratory analysts meet these minimum requirements. The laboratory analysts are salaried-exempt

employees thus not entitled to overtime compensation. Their wages are paid on a bi-weekly basis and receive a full month's pay as a Christmas bonus. They share the same benefits as the administrative staff, including but not limited to, health plan, long term disability, and performance appraisal awards.

The laboratory analysts do not interact in their day to day with unit employees as they spend approximately 99% of their time in the laboratory performing laboratory work. If there is any interaction at all, this is limited to once a day and usually during the morning hours when a unit employee delivers the samples to the laboratory which are then used by the laboratory analysts to perform product testing.⁶ They are assigned their own lunch area, park at a parking lot near their building, and do not have lockers. They wear a white laboratory robe as a uniform. There are no other employees in the Employer's employ qualified to perform the work of the laboratory analysts. As a result, there is no history of job transfers from unit positions. If and when the results of the laboratory analysts are in non-compliance, they inform the supervisor relevant to the process, be it the bottling or distillery supervisor, so corrective actions can be taken. In addition, the laboratory analysts perform preventive and maintenance work on laboratory equipment as this equipment is highly specialized. Thus, the maintenance employees (unit employees) do not perform maintenance work on laboratory equipment. If repairs are needed, an external technician is called upon to repair the equipment. However, when a light bulb

⁶ The record is devoid of evidence setting forth specifics of any interaction involving the delivery of the referenced samples.

needs to be changed or the air conditioner in the laboratory needs to be repaired, the electricians or maintenance employees perform the work.

3. The anaerobic plant technicians

There are four anaerobic plant technicians. They work at the Mosto area and at the control room, which are located within approximately 10 minutes walking distance from the bottling and distillery plants. The mosto and control room are located within a short distance to the maintenance shop and the electricians work area. The anaerobic plant technicians perform technical work related to the operation of the biological, anaerobic treatment plant and sulfur recovery plant. They are responsible for collecting gas, must, cooling tower, and sulfur plant samples. They also analyze samples, adjust the computerized system, monitor the operational parameters of the sulfur plant and treatment plant, order and receive chemical products and laboratory materials, oversee the operation of the plant, and coordinate work and maintenance orders. In terms of supervision, the anaerobic plant technicians report to the distillery manager, who reports to the director of the distillery and bottling plant. The distillery manager also supervises non-unit positions such as the laboratory coordinator, the technician facilitator and the production and maintenance facilitators. The production and maintenance facilitators supervise the distillery operators, a unit classification.

The record evidence shows that the anaerobic plant technicians park at the parking area closest to their work location. This parking area is not utilized

by most unit employees. As with the laboratory analysts, the anaerobic plant technicians have their own assigned lunch area and do not use lockers.

The work of the anaerobic plant technicians is performed 24 hours a day, seven days a week. There are three shifts: from 6:00 a.m. to 2:00 p.m.; from 2:00 p.m. to 10:00 p.m.; and from 10:00 p.m. to 6:00 a.m. Only one anaerobic plant technician is assigned to work per shift.

All four anaerobic plant technicians share the same job requirements and skills. In this regard, it is required that they have at least an associate degree in Chemistry or its equivalent, possess treatment plant license, and have six months to one year of experience in similar functions, and special trainings related to their specific classification. They are non-exempt salaried employees paid on a bi-weekly basis and are compensated for working overtime. They also receive pay equivalent to one month of salary as a Christmas bonus, and have the same benefits as the administrative staff. The record evidence shows that their duties are not shared with other classifications at the facility.

VII. ANALYSIS

Timeliness of the Petition and Contract Bar

Under the Board's current contract bar policy, a contract will only serve as a bar to a stranger petition for a period of three years. General Cable Corp., 139 N.L.R.B. 1123, 1125 (1962). A contract whose duration is longer than three years is treated, for contract bar purposes, as though it was a contract of three years' duration. Thus, regardless of a contract's length in excess of three years, a petition may be filed during the 90-60 day open period prior to the third

anniversary date of the contract, and after the third year anniversary date of the contract if no new agreement is made during the 60-day insulated period prior to the third year anniversary of the contract; see, Deluxe Metal Furniture Co., 121 N.L.R.B. 995, 1000-1001 (1958), and General Cable Corp., *supra* at 1125.

The Board in Benjamin Franklin Paint Co., 124 NLRB 54 (1954), was presented with the question whether the controlling date, for the purpose of determining the contract term and the timeliness of the petition, is the *execution* date or the *effective* date of the contract. In Benjamin Franklin, *supra*, the Board held that it would best effectuate the policies of the Act to compute the term of a contract for bar purposes from the effective date of the contract and not from its execution date. The Board, in reaching its conclusion, expressed that “the term of a contract technically embraces the effective term provided in the instrument, and it is this term on the face of the contract to which the employees and outside unions look to predict the appropriate time for the filing of a representation petition.” The Board also noted that many contracts do not show the execution date, or such date as appeared may not be accurate. As a result, it concluded that the desired predictability would be lost if reliance were to be placed on the execution date. The Board also rejected the Intervenor’s argument that reliance on the effective date will deprive the parties of the full contract bar period deemed necessary for industrial stability. The Board noted that parties have the benefit of a full term of effective contract coverage since the parties negotiated a contract for an effective term, with a retroactive application. Therefore, the

period for contract-bar purposes was established in accordance with the terms of the agreement as provided by the parties themselves.

Thus, the Incumbent's argument, including its reliance upon DePaul Adult Care Communities, 325 NLRB 681 (1998); Empire Screen Printing, 249 NLRB 718 (1980); United Telephone Company of Ohio, 179 NLRB 732 (1969); General Cable Corp., 139 NLRB 1123 (1962); Appalachian Shale Products Co., 121 NLRB 1160 (1958) and Hexton Furniture, 111 NLRB 342 (1955), that the execution date is controlling for bar purposes, is misconstrued. In none of those cases the Board was presented with the question herein, of whether the controlling date, for the purpose of determining the timeliness of the petition, is the execution date or the effective date of the contract. Rather, the issue before the Board was whether contract bar existed in cases where the contract had not been reduced to writing. Here, there is a duly executed contract with a date of effectiveness and of execution.

In this case, the effective date of the contract is January 1, 2006, and the Petition was filed on February 13, 2009. Since the Petition was filed after the expiration of the third anniversary of the contract, I find that the Petition was timely filed.

Community of Interest

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also

has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Co., 331 NLRB 662, 663 (2000). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. Bartlett Collins, *supra*, citing Morand Bros. Beverage Co., 91 NLRB 409, 419 (1950), *enfd. on other grounds*, 90 F.2d 576 (7th Cir. 1951).

The Incumbent argues that the petitioned unit should include the laboratory analysts and anaerobic technicians based on the fact that these classifications share a community of interest with the unit. The Petitioner seeks to represent the unit as described in the extant collective-bargaining agreement, however it is not opposed to a unit including these classifications. On the other hand, the Employer contends that these classifications do not share a community of interest with the extant bargaining unit.

In determining whether the employees possess the same community of interest the Board examines the nature of employee skills and functions, the degree of functional integration, interchangeability and contact among employees, common work situs, common supervision, geographic separation, bargaining history, and commonalities in general working conditions. *See, e.g., Overnite Transportation, Co.*, 331 NLRB 662 (2000)(nature of employee skills and functions); Publix Supermarkets, Inc., 343 NLRB 1023 (2004) (degree of functional integration); J.C. Penny Co., 238 NLRB 766 (1999) (interchange and contact among employees); Allied Gear & Machine Co., 250 NLRB 679 (1980) (general working conditions); R-N Market, 190 NLRB 292 (1971) (work situs);

bargaining history, Alley Drywall, Inc., 333 N.L.R.B. 1005, 1007 (2001); and United Rentals, Inc., 341 NLRB 540 (2004) (common supervision). Functional integration is not limited to the matter of employee contacts, but also concerns the interrelation of the actual operations of the facilities. Bry-Fern Care Center, 21 F.3d 706, 710 (1993). In addition, the Board may reasonably find employees to share common supervision when a central administration or personnel office is involved in setting personnel policies and performing personnel functions, even where employees have separate direct supervisors and divisions and make their own decisions about hiring and firing of employees. Presbyterian Medical Ctr., 218 NLRB 1266, 1268 (1975).

The absence of a particular community of interest factor will not require a finding of lack of community of interest. Berea Publishing Co., 140 NLRB 516, 518 (1963). Difference in supervision is not a per se basis for excluding employees from an appropriate unit. Texas Empire Pipe Line Co., 88 NLRB 631 (1950); Warner-Lambert Co., 298 NLRB 993, 994 (1990). An absence of employee contact does not eliminate community of interest where employees remain functionally integrated. Rather than any specific criteria, it is the general interests, duties, nature of work and working conditions of the employees that are significant in resolving questions concerning an appropriate unit. Kansas City Power & Light Co., 75 NLRB 609 (1948).

Further, in assessing community of interest, no single factor need receive more weight than another. Rather, the Board reviews the factors as a whole in determining whether sufficient community of interest exists between employees.

Hotel Services Group, Inc., 328 NLRB 116 (1999). Finally, in determining an appropriate unit, a petitioner's desire is a relevant consideration and can be relied on in conjunction with other factors, but may not be the dispositive consideration. See, e.g., Huckleberry Youth Programs, 326 NLRB No. 1272 (1998); Metropolitan Life Insurance Co., 156 NLRB 1408.

In this case, I find that the laboratory analysts and the anaerobic plant technicians do not share a community of interest with the unit that would compel their inclusion in the unit. Initially, it is noted that no other employee is qualified to perform the duties of the laboratory analysts or the anaerobic technicians. This shows that these two classifications require skills, experience, and trainings not shared with unit employees. Although the record is devoid of specific evidence of the skills, qualifications and functions of each of the classifications in the existing unit, it can be inferred that the work performed by the laboratory analysts and the anaerobic technicians is not related or even similar with the work performed by unit employees. In addition, there is no degree or significant amount of functional integration or contact between these employees and unit employees in their day to day work. The laboratory analysts spend most of their time in the laboratory, where no other unit employee works. The only direct interaction they have with unit employees is limited to when the delivery of the samples used by the laboratory analysts occurs. However, this standing alone is insufficient to support a finding of functional integration. Any other interaction with unit employees is with the electrician and maintenance employees when, for example, air conditioning is being repaired or a light bulb is changed. However,

this work-related interaction does not amount to functional integration between these classifications. Moreover, these work-related contacts are not different from the ones the electricians or maintenance employees have with managerial or administrative personnel under similar circumstances. Further, the fact that the laboratory analysts and anaerobic plant technicians do not share the same parking and lunch areas tends to support that their contact with unit employees during work hours is minimal.

Regarding their work location, it is noted that no other unit employees work in the same building as the laboratory analysts, and the building where other unit employees work, which is bottling and distillery, is located within an approximate walking distance of 15 minutes. The anaerobic technicians, on the other hand, must walk approximately 10 minutes to reach the bottling and distillery areas. The closest unit employees to the anaerobic technicians are the maintenance shop employees and the electricians since the maintenance shop is located close by.

In terms of supervision, the laboratory analysts are supervised by the QC facilitator who reports to the QA director. The facilitator and the QA director do not supervise unit employees. The anaerobic technicians are supervised by a Manager, who also supervises the production and maintenance facilitators. It should be noted that the production and maintenance facilitators supervise the distillery operators, a unit classification. However, the production and maintenance facilitators do not supervise the anaerobic technicians. This distinction in levels of supervision between the anaerobic technicians and the

distillery operators, as well as the fact that the laboratory analysts are in a different department, creates a distinction between the groups in terms of supervision and control of labor relations.

Regarding commonalities in general working conditions, the laboratory analysts and anaerobic plant technicians follow the same rules of conduct followed by unit employees. For example, they register their work hours using the same attendance system, but at different locations, and follow the same procedure when requesting leaves of absence. However, wages, benefits, hours, and other conditions of employment of the laboratory analysts, the anaerobic plant technicians and the unit employees differ substantially. The employees in the disputed classifications of laboratory analysts and anaerobic plant technicians are not paid according to the same wage structure. The unit employees are hourly rate employees, paid on a weekly basis, and classified as non-exempt. The laboratory analysts and anaerobic plant technicians are salaried employees paid on a bi-weekly basis. The anaerobic plant technicians are non-exempt salaried employees entitled to overtime. However, this single similarity with unit employees is not a determinant factor in view of the fact that the overall working conditions are substantially different from those of the unit employees.

It is noted that there is a bargaining history involving the petitioned unit and it is well recognized that long-established bargaining relationships will not be disturbed where they are not repugnant to the Act's policies, and a heavy burden is placed on the one attempting to show that historical units are not appropriate.

Rather, the showing of compelling circumstances is required to overcome the significance of bargaining history. Cadillac Asphalt Paving, Co., 349 NLRB 6 (2007); Ready Mix USA, 340 NLRB 946, 947 (2003); Banknote Corp. of America, 315 NLRB 1041 (1994). In this case, the Incumbent did not satisfy its burden when challenging the historical unit it represents. The bargaining history between the Employer and the former bargaining representative beginning in 1979, and the on-going bargaining history with the Incumbent since November 14, 2000, along with the existing collective-bargaining agreement, weigh heavily in favor of maintaining the historical bargaining unit as established. There is nothing intrinsically inappropriate about the existing unit and the Incumbent has not established sufficiently compelling circumstances that would warrant disturbing the established unit. See Met Electrical Testing Co., 331 NLRB 872 (2000); Banknote Corp. of America, 315 NLRB 1041, 1041, 1043 (1994), *enfd.* 84 F.3d 637 (2d Cir. 1996).

Based upon the foregoing and the entire record herein, I find that the community factors analyzed as a whole, as well as the long bargaining history, weighs in favor of the exclusion of the laboratory analysts and the anaerobic plant technicians from the petitioned-for unit. Therefore, I find that the unit as requested by the Petitioner is appropriate for the purpose of collective-bargaining.

Confidential Employees

Confidential employees are defined as employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate

management policies with regard to labor relations, or regularly substitute for employees having such duties. Under Board policy, they are excluded from the bargaining unit. Waste Management De Puerto Rico, 339 NLRB 262 (2003). The fact that some employees may be entrusted with business information to be withheld from their employer's competitors does not render such employees as confidential. Swift & Co., 119 NLRB 1556, 1567 (1958.)

The Employer argues that the laboratory analysts and anaerobic plant technicians are confidential employees, however, the record evidence shows that they do not formulate, determine or participate in the effectuation of labor relations policies. The fact that they have access to the rum formulae does not classify them as confidential employees. In view of the above, I find that the laboratory analysts and the anaerobic technicians are not confidential employees.

VIII. THE UNIT:

The following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of section 9(b) of the Act:

Included: All regular hourly production and maintenance employees employed by the Employer at its distillery and bottling plant located at Bo. Palmas in Cataño, Puerto Rico.

Excluded: All executive, administrative, professional, confidential personnel, all salaried personnel, foremen, office employees, office janitors, messengers, bartenders, cocktail employees, chauffeurs of executives, guards and supervisors as defined in the Act, and as defined in Case 24-RC-6358 of the National Labor Relations Board.

There are approximately 121 employees in this unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁷ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid-off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented

⁷ As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

for collective-bargaining purposes by Movimiento Solidario Sindical; the Union Internacional, UAW, Local 2415; or neither.

EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for the unit, containing the **full** name and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 24, La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Ave., San Juan PR 00918-1002, on or before April 6, 2009. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be

submitted by facsimile transmission at 787-766-5478, or by e-mail to the Regional Office. See OM 05-30 and OM-0707, which are available on the Agency's website at www.nlr.gov, for a detailed explanation of requirements which must be met when electronically submitting documents to be Board and Regional Offices. Guidance can also be found under E-Gov on the Board's website. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notice of Elections provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National

Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington DC 20570. A request for review may also be submitted by electronic filing. See attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website as www.nlr.gov, for a detailed explanation of requirements which must be met with electronically submitting documents to the Board and Regional Offices. Guidance can also be found under E-Gov on the Board's website. This request must be received by the Board in Washington by 5:00 pm, EST on April 13, 2009. This request may **not** be filed by facsimile.

Dated in San Juan, Puerto Rico, this 30th day of March, 2009.



/s/

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board
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